



ORDINANCE 2017-01

**AN ORDINANCE OF THE CITY OF TRINIDAD
PROHIBITING COMMERCIAL CANNABIS ACTIVITIES AND REGULATING CANNABIS
CULTIVATION FOR PERSONAL USE**

The City Council of the City of Trinidad does hereby ordain as follows:

ORDINANCE 2017-01, SECTION 1:

There is hereby added to the Trinidad Municipal Code a new Section, 5.28, replacing the existing Section 5.28, which shall read as follows:

Section 5.28 Regulations for Commercial and Personal Cannabis Activities

Sections:

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5.28.01 Short Title.

This Section shall be known and may be cited as "City of Trinidad Cannabis Ordinance."

5.28.02 Findings

5.28.02.1 Proposition 64, the Adult Use of Marijuana Act (AUMA) was approved by the voters and became effective November 9, 2016.

5.28.02.2 The AUMA and related laws legalize the use of recreational cannabis and create a State regulatory and licensing system for commercial cultivation, testing, manufacturing and distribution of nonmedical cannabis.

5.28.02.4 The AUMA and related state laws authorize local governments to prohibit all commercial cannabis businesses, and to adopt reasonable regulations over the manner by which personal use cultivation may lawfully be conducted. The City Council finds that such prohibitions and regulations are necessary because:

- A. Cultivation of cannabis may result in an increase in the risk of trespass, robbery and other violent crime due to its monetary value, and its pungent odors that may be detectable far beyond property boundaries.
- B. Cannabis that is cultivated indoors requires lighting systems that can result in excessive use of electricity which may overload standard electrical systems creating an unreasonable risk of fire
- C. Indoor cultivation of cannabis can lead to mold, mildew, and moisture damage to the building in which it is grown.
- D. Indoor cultivation of cannabis can lead to a decrease in rental housing stock as rental homes are converted to grow houses.
- E. The use of gas products, such as butane, and toxic chemicals are prevalent in the cultivation of cannabis and the production of cannabis products. The use of these dangerous substances poses safety and environmental concerns.
- F. Indoor cultivation of cannabis can lead to a decrease in rental housing stock as rental homes are converted to grow houses.

5.28.02.5. On August 9, Sept 13, and Sept 27, 2017, the City Council of the City of Trinidad, at duly noticed regular meetings, discussed and took public comment on the development of this proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity to address the City Council on these matters.

5.28.02.6 The proposed Ordinance has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA), and the City has determined that the proposed Ordinance is Statutorily Exempt pursuant to Section 15061(b) (3) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations.

5.28.02.7 The City adopts this ordinance pursuant to its police powers granted under Article XI, section 7 of the California Constitution in order to promote the health, safety and welfare of the residents of the City of Trinidad.

5.28.03 Purpose.

The purpose of this Ordinance is to expressly prohibit all commercial cannabis activities in the City of Trinidad, and to reasonably regulate cannabis cultivation for personal use in the City of Trinidad to promote and protect the health, safety, and welfare of the residents of the City of Trinidad.

5.28.04 Applicability and Interpretation.

5.28.04.1 The indoor cultivation and processing of marijuana for personal use in a residence or detached accessory building within the jurisdiction of the City of Trinidad shall be controlled by the provisions of this Ordinance, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Ordinance.

5.28.04.2 Nothing in this Ordinance is intended, nor shall it be construed, to exempt any indoor residential cultivation of marijuana for personal use from compliance with the zoning and land use regulations of the City of Trinidad, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable ordinances of the City of Trinidad, or any other applicable state or federal laws.

5.28.04.3 Nothing in this Ordinance is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.

5.28.04.4 All commercial cannabis activity within the jurisdiction of the City of Trinidad shall be controlled by the provisions of this Ordinance, regardless of whether such activity existed or occurred prior to the adoption of this Ordinance.

5.28.05 Definitions.

A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" includes cannabis that is used for medical, non-medical, or other purposes. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" also does not include industrial hemp, as defined in California Health and Safety Code section 11018.5.

B. "Cannabis accessories" means any equipment, products or materials of any kind which is intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

C. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

D. "Commercial cannabis activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis product for medical, non-medical, or any other purpose and includes the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses.

E. "Concentrated cannabis" means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate.

F. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

G. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer.

H. "Detached Accessory Building" means a building which is a) incidental and subordinate to the residence or residential use; b) located on the same parcel as the person's Private Residence; c) does not share at least ten (10) feet of common wall with the Private Residence or other accessory building; d) has a roof supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached; and (e) has walls that are opaque. For the purposes of this Section, a greenhouse shall be considered a Detached Accessory Building if it meets the definition of Detached Accessory Building and complies with all other regulations set forth in this Ordinance.

I. "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as they may be amended from time to time.

J. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

K. "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act as codified in Division 10 of the Business and Professions Code, as the same may be amended from time to time.

L. "Private residence" means a house, an apartment unit, condominium, or other similar dwelling that is lawfully used as a residence.

5.28.06 Prohibited uses and activities.

5.28.06.1 Commercial Cannabis Activity Prohibited. Commercial cannabis activity, whether for profit or not-for profit, and whether for medical or recreational purposes, is prohibited in the City of Trinidad. No person shall establish, operate, maintain, conduct, allow, or engage in commercial cannabis activity anywhere within the city. To the extent that this prohibition conflicts with any other provision of this Municipal Code, this prohibition will control.

A. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial cannabis activity on any real property within the City of Trinidad owned or controlled by that property owner.

B. Subsection A above shall prohibit all cannabis activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MAUCRSA, as the same may be amended from time to time.

5.28.06.2 Outdoor Cultivation Prohibited. Outdoor cultivation of cannabis plants for personal use or commercial use is prohibited in the City of Trinidad.

5.28.07 Regulations for the Indoor Personal Cultivation of Marijuana.

To eliminate the potential nuisance and health and safety impacts to the greatest extent possible, Personal Cultivation of Marijuana shall be in conformance with the following standards:

5.28.07.1 No Personal Cultivation of Marijuana shall occur unless and until the person has obtained a permit issued by the City of Trinidad pursuant to Section 5.28.08, below.

5.28.07.2 Personal Cultivation of Marijuana shall occur Indoors in a Private Residence and/or in a Detached Accessory Building.

5.28.07.3 A person may not conduct the Personal Cultivation of Marijuana in more than one Private Residence or Detached Accessory Building within the City of Trinidad, regardless of whether the person owns or leases two or more parcels within the City of Trinidad.

5.28.07.4 Personal Cultivation of Marijuana within a Private Residence shall not exceed six Marijuana plants, shall not exceed fifty square feet, and shall not exceed ten (10) feet in height, per Private Residence, regardless of the number of persons over the age of 21 residing in the Private Residence.

5.28.07.5 Personal Cultivation of Marijuana within a Detached Accessory Building shall not exceed six Marijuana plants, shall not exceed fifty (50) square feet, and shall not exceed ten (10) feet in

height, per parcel of real property, regardless of the number of persons over the age of 21 residing on the parcel and regardless of the number of Detached Accessory Buildings on the parcel.

5.28.07.6 The Private Residence where the Personal Cultivation of Marijuana occurs shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for marijuana cultivation.

5.28.07.7 The Private Residence or Detached Accessory Structure where Personal Cultivation of Marijuana occurs shall comply with all applicable state law and City of Trinidad ordinances, including fire and building codes.

5.28.07.8 The Private Residence or Detached Accessory Structure where Personal Cultivation of Marijuana occurs shall be secured against unauthorized entry.

5.28.07.9 Lighting used for the Personal Cultivation of Marijuana shall not exceed 1,200 watts in the aggregate for any single Personal Cultivation Permit.

5.28.07.10 All electrical equipment and wiring used in the Personal Cultivation of Marijuana shall be fully compliant with current Building Code, and shall be plugged directly into a wall outlet or otherwise hardwired. Any electricity supplied to a greenhouse shall be used exclusively to operate the filtration system.

5.28.07.11 No toxic or flammable fumigant shall be used for the Personal Cultivation of Marijuana.

5.28.07.12 The use of gas products (e.g. CO², butane, etc.) for the Personal Cultivation of Marijuana is prohibited.

5.28.07.13 No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of the Personal Cultivation of Marijuana.

5.28.07.14 The Personal Cultivation of Marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the Personal Cultivation of Marijuana.

5.28.07.15 On parcels that contain more than one Private Residence, no odor of Marijuana shall be detectable from the exterior of the Private Residence or Detached Accessory Building by a person of ordinary senses. On parcels that contain only one Private Residence, no odor of Marijuana shall be detectable from the parcel boundaries by a person of ordinary senses. To achieve this, the Marijuana cultivation area (whether in a Private Residence or Detached Accessory Building) shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of Marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to noncultivation residential uses.

5.28.07.16 From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of the Personal Cultivation of Marijuana at or within the Private Residence or Detached Accessory Building that is detectable by a person of ordinary senses.

5.28.07.17 No sale, trading, or dispensing of Marijuana is allowed on a parcel where the Personal Cultivation of Marijuana occurs.

5.28.07.18 A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor from water damage.

5.28.08 Permit Required.

5.28.08.1 A permit issued by the City of Trinidad must be obtained before a person may lawfully engage in the Personal Cultivation of Marijuana within the City of Trinidad.

5.28.08.2 A Personal Cultivation Permit shall be issued if the applicant does the following:

A. Completely and accurately submit an application for a Personal Cultivation Permit on a form supplied by the City of Trinidad. Among other things the City of Trinidad may require, the application shall require each person to provide proof of ownership of the parcel or, when applicable, the expressed written consent of his or her landlord to engage in all permitted activity.

B. Successfully passes an initial inspection conducted by the City of Trinidad or its designated representative to ensure the Private Residence or Detached Accessory Building complies with this Ordinance, including but not limited to, Section 5.28.07, above.

C. Pay the required fee for issuance of a Personal Cultivation Permit. The City Council of the City of Trinidad may make annual adjustments to the permit fee in its sole discretion by resolution.

D. Submit to periodic inspections of the Private Residence or Detached Accessory Building. Such periodic inspections, however, shall not exceed more than one (1) inspection per six (6) month period and shall be conducted only after prior 48 hours written notice is sent to the permit holder by certified mail. Notwithstanding the foregoing, the City of Trinidad reserves the right to conduct more frequent inspections if (a) the City of Trinidad has credible information that a violation of this Ordinance is occurring or (b) the person has violated this Ordinance within the past two (2) years.

5.28.08.3 Once issued, a Personal Cultivation Permit is valid for a period of one year from the date of issuance. A Personal Cultivation Permit may be renewed in accordance with Section 5.28.08.2, above.

5.28.08.4 A Personal Cultivation Permit is personal to the applicant and authorizes the Personal Cultivation of Marijuana only at the location described in the application. A Personal Cultivation Permit is not transferable to another person or to another parcel.

5.28.09 Exceptions

5.28.09.1. Notwithstanding Subsection 5.28.05 above, the delivery of medical cannabis from a business located outside the city and licensed under the MAUCRSA, or any other provision of law that permits State licenses for medical cannabis businesses, shall be permitted into the city.

5.28.09.2 As allowed under the AUMA, persons over 21 years of age may engage in the cultivation of six or fewer live cannabis plants either within a single private residence, or inside an accessory structure located upon the grounds of a private residence. Where such cultivation involves installation or modification of electrical systems, hi wattage lights, plumbing, or other building modifications, a Building Permit may be required to ensure personal and public safety.

5.28.10 Enforcement

5.28.10.1 It is unlawful to violate the provisions of this Section. Any person, firm, corporation, or other entity, whether as principal, agent, employee or otherwise, violating or causing violation of any provision of this Section is guilty of a misdemeanor and shall, upon conviction thereof, be

punished in the manner provided in Trinidad Municipal Code Section 1.08.010, unless such violation constitutes a felony under California law, in which case the penalty under California shall apply.

5.28.10.2 Violations of this Ordinance constitute a public nuisance per se and are subject to injunction, abatement, or any other remedy available to the City of Trinidad as provided by all applicable provisions of law, including but not limited to administrative or summary abatement of any nuisance conditions, immediate revocation of the Personal Cultivation Permit, and/or a civil action for injunctive relief, as provided in Trinidad Code Section 8.12.

5.28.10.3 All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this Ordinance shall be deemed to authorize or permit any activity that violates any provision of state law.

5.28.10.4 Any Personal Cultivation Permit issued under this Ordinance shall be revoked by operation of law, and without prior notice to the permit holder, in the event the permitted activity is made illegal under State law.

5.28.11 Severability

Should any subsection or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.


5.28.12 Effective Date

This ordinance becomes effective thirty (30) days after the date of its approval and adoption.


PASSED, APPROVED, AND ADOPTED by the Trinidad City Council on November 8, 2017 by the following vote:

Ayes:	West, Miller, Baker,
Noes:	None
Abstain:	None
Absent:	Ladwig, Rotwein

Attest:


Becky Price-Hall,
acting for the City Clerk

Approved:


Dwight Miller
Mayor

First Reading: **Wednesday, October 11, 2017**

Second Reading: **Wednesday, November 8, 2017**